Richard Hyndmarſh, AND *Margaret* his Wife } APPELLANTS. { From a Decree, and ſeveral Reports and Orders thereupon made in the Court of Exchequer-Chamber. } *Mary Everard* the Mother, AND *Mary* the Daughter. } RESPONDENTS.

The Appellants CASE.

THE 25th. of *June*, 1673. *Daniel Collingwood*, being ſeized of the Manors of *Branton Brandon* and *Revely*, in the County of *Northumberland*, charged with 30 *l. per Ann.* for Life, to my Lady *Collingwood*, and 5 *l. per Ann.* to Mr. *Collingwood* for Life, ſettled them upon himſelf in Tail Male, and after on his Brother *George* in like manner, and charges them with the Payment of 1400 *l.* for his Siſters *Margaret*, the Appellant, and *Mary*'s Portions: And if his ſaid Brother died without Iſſue Male, with 1100 *l.* more to augment their ſaid Portions. And the ſaid *Daniel*, being alſo poſſeſt of the *Holly Iſland*, worth 80 *l. per Ann.* by Virtue of a Leaſe from the Crown for Thirty one Years, to commence from the 25th. of *March*, 1672. dyes Inteſtate without Iſſue, and thereupon his ſaid Brother *George*, being his Heir and Adminiſtrator, enters into and enjoys all the Premiſſes, and ſells the ſaid Manor of *Brandon* to Mr. *Aldgood*, and the ſaid Manor of *Revelly* to Mr. *Banner*.

The 17th. of *February*, 1689. the ſaid *George*, to ſecure the Lands ſo ſold from Incumbrances, and the Payment of his ſaid Siſters Portions as to the ſaid 1400 *l.* only with Intereſt, by Bargain and Sale enrolled, conveys the ſaid Manor of *Branton* to Truſtees for theſe Purpoſes, and after in Truſt for himſelf and his Heirs.

The 4th. of *Auguſt*, 1691. the ſaid *George*, by other Deeds, charges the ſaid Manor of *Branton* with the Payment of ſeveral Summs, with Intereſt, unto the ſaid *Aldgood* and *Banner*, amounting in all to 187 *l.* 10 *s.* 00 *d.*

She was his Servant, and they lived Scandalouſly together, and ſhe prevailed with him to make this Will.

The 7th. of *June*, 1689. the ſaid *George* makes his Laſt Will, and thereby charges his Eſtate with the Payment of all his juſt Debts, and deviſes the ſaid Manor of *Branton* to his ſaid Siſters *Margaret*, the Appellant, and *Mary* in Fee, they paying unto the Reſpondents, *Mary* the Mother 20 *l.* yearly for Life, and *Mary* the Daughter 30 *l.* yearly for her Education till Marriage or full Age, and then 1000 *l.* if ſhe married one of his Name and Kindred, and gave the ſaid Leaſe of the *Holly Iſland* to his Brother, Colonel *Collingwood*'s eldeſt Son, he paying yearly out of it 5 *l.* to Mr. *Humes*, and made his ſaid Siſters Executors, and the 12th. of *November*, 1691. died without Iſſue, whereby his ſaid Siſters additional Portions of 1100 *l.* became due and payable out of the ſaid Manor of *Branton*; and about Six Months after, the ſaid *Mary* died Inteſtate, whereby the Appellant *Margaret*, being her Heir and Adminſtratrix, became Intituled to her ſaid Portion, and the ſaid Manor of *Branton* charged therewith, and with the Debts of the ſaid *George*, as aforeſaid.

Not one Word in the Bill for Sale of the Eſtate.

The Reſpondents Exhibit their Engliſh Bill into the Court of Exchequer againſt the Appellants, and ſome others of the Teſtator's Creditors, to enforce the Payment of their ſaid yearly Legacies of 20 *l.* and 30 *l.* and the Arrears thereof, and the Securing the ſaid 1000 *l.* Portion.

To which the Appellants put in their Anſwer, and thereby did inſiſt, that the Teſtator's ſaid real Eſtate, and the Produce and Profits thereof, ought in the firſt place to be applied to ſatisfie the ſaid Debts and Incumbrances wherewith it was charged as aforeſaid, together with all other the juſt Debts of the Teſtator, which did amount to above 500 *l.* more, before the Reſpondents were let in to be paid their ſaid Legacies.

The 12th. of *June*, 1700. the ſaid Cauſe was heard, and the Appellants decreed to Account with the Reſpondents for the perſonal Eſtate, and the Profits of the real Eſtate of the Teſtator, and to pay the Reſpondents 50 *l. or quit the Poſſeſſion of the Premiſſes* to the Reſpondents, and that an Account ſhould be taken, and reported to the Court, of the Incumbrances upon the Eſtate, and the Teſtator's Debts.

The 7th. of *July*, 1701. the Deputy-Remembrancer reports, That he found the Teſtator left no perſonal Eſtate, but the ſaid Leaſe of the ſaid *Iſland* worth 80 *l.* and of the ſaid Manor of *Branton* 160 *l. per Ann.* which had been received by the Appellants from the ſaid Teſtator's Death for Nine Years and half unto the 12th. of *May*, 1701. and that the Incumbrances on the Eſtate, and Debts owing by the Teſtator, at his Death, did amount only to 1753 *l.* 12 *s.* and that after all juſt Allowances made the Appellants for Intereſt of the ſaid Summ during that time, and for Taxes, Repairs, *&c.* there did remain in their Hands 845 *l.* 13 *s.* 4 *d.* out of which there was due to the Reſpondents, for the Arrears of their ſaid Legacies, 475 *l.* and 121 *l.* 10 *s.* for Intereſt thereof, whereof the Appellants had paid 50 *l.* in Obedience to the ſaid Decree, ſo that there reſted only due to the Reſpondents out of the ſaid Profits 546 *l.* 10 *s.* which when paid, there would ſtill reſt in the Appellants Hands 299 *l.* 3 *s.* 4 *d.* towards Payment of the Teſtator's ſaid Incumbrances and Debts, and that the ſaid Manor of *Branton* was worth, to be ſold, 3200 *l.* and the *Holly Iſland* 480.

There was then not Two Years to come of the Leaſe, and it's but 80 *l. per Annum.*

The 27th. of *October*, and 10th. of *November*, 1701. the ſaid Court confirmed the ſaid Report, as to all ſave the 121 *l.* 10 *s.* for Intereſt, and decreed the Payment thereof accordingly to the Reſpondents, and that for the future, the Appellants ſhould yearly pay the Reſpondents the ſaid 20 *l.* and 30 *l.* Legacies out of the Profits of the ſaid Eſtate according to the Will, and 100 *l.* Coſts of Suit, of which Report, Order, and Decree, the Appellants having no Notice, and the ſame being made *ex parte*, without hearing the Appellants, they frequently applied to the ſaid Court, to have the ſaid Cauſe reheard upon the ſaid Report, and paid the Reſpondents 30 *l.* more; and yet notwithſtanding could not obtain the favour to rehear the ſame, without Payment of the whole 474 *l.* ſo decreed the Reſpondents. Whereupon this Appeal is brought, and theſe Appellants, who are now in Priſon for not performing the ſaid Decree, humbly pray, for the REASONS following, the ſame may be reverſt, and they reſtor'd.

1. For that theſe Appellants ought not to have been decreed to account with the Reſpondents for the Profits of the Teſtator's Eſtate, but with his Creditors.

2. For that theſe Appellants ought not to have been decreed to have paid the 50 *l.* mentioned in the Decree, towards Satisfaction of the Reſpondents Legacies, untill after it did appear upon Account, they had Aſſets in their Hands for that purpoſe.

3. For that there is upwards of 1500 *l.* Debts and Incumbrances of the ſaid Teſtator's, of which no Notice is taken, or for which any Allowance is made by the ſaid Report, Orders, or Decrees.

4. For that the Profits of the Teſtator's Eſtate, found to be in the Appellants Hands, are ordered and decreed to be paid towards Satisfaction of Arrears of the Reſpondents Legacies, and not for the Diſcharge of the Teſtator's Debts and Incumbrances in the firſt place, as they ought to have been.

5. For, that for the future, theſe Appellants are decreed, out of the Profits of the ſaid Manor of *Branton*, to pay the ſaid growing yearly Legacies of 20 *l.* and 30 *l.* to the Reſpondents, which Profits ought firſt to be applied to diſcharge the ſaid Incumbrances, and the Teſtator's ſaid juſt Debts.

6. For that the Appellants are charged with the Profits of the ſaid *Holly Iſland*, for Nine Years and a half, amounting to 760 *l.* as part of the perſonal Eſtate of the Teſtator's in their Hands, liable to ſatisfie the Reſpondents Demands, when in Truth the ſame being a Specifick Legacy, given, as aforeſaid, to the ſaid Colonel *Collingwood*'s Son, belongs to him, and the Reſpondents Demands, and the Teſtator's Debts, being *by expreſs Words charged* upon the ſaid Manor of *Branton*, and the ſame reported to be ſufficient to pay all, the ſaid Iſland, or the Proceed thereof, ought not to be applied toward Satisfaction thereof.